

Calendar No. 622

84TH CONGRESS
1ST SESSION

S. 1644

[Report No. 617]

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 10), 1955

Mr. KILGORE (for himself, Mr. BENDER, Mr. BUTLER, Mr. DWORSHAK, Mr. FULBRIGHT, Mr. HUMPHREY, Mr. JACKSON, Mr. LANGER, Mr. LEHMAN, Mr. MCCLELLAN, Mr. McNAMARA, Mr. MAGNUSON, Mr. MORSE, Mr. SPARKMAN, Mr. YOUNG, Mr. KUCHEL, and Mr. NEUBERGER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 21 (legislative day, JUNE 20), 1955

Reported by Mr. KILGORE, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Construction
4 Contract Act of 1955".

5 SEC. 2. (a) Each executive agency shall list in the bid-
6 ding or contract documents relating to each lump-sum con-
7 struction contract before accepting bids or proposals with
8 respect thereto, each major category of mechanical specialty
9 work involved in the performance thereof.

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1 (b) No executive agency shall award to, or enter into
2 a lump-sum construction contract with, any prime contractor
3 unless the name of the contractor ~~who will perform with~~
4 *whom the prime contractor will contract for the performance*
5 *of each major category of mechanical specialty work in-*
6 *volved in the performance thereof* which may have been
7 listed by the contracting executive agency in the bidding or
8 contract documents, has been specified by the prime con-
9 tractor in the bid or proposal upon which the contract is
10 awarded or made.

11 (c) This section shall not prevent any prime contractor
12 from himself performing any major category of mechanical
13 specialty work under a lump-sum construction contract
14 awarded to or undertaken by him if the bid or proposal
15 referred to in subsection (b) of this section specifies that
16 the prime contractor will himself perform such category of
17 the mechanical specialty work.

18 (d) This section shall not be construed to forbid or
19 prevent any executive agency from awarding separate or
20 several prime or direct lump-sum construction contracts for
21 any one construction project.

22 (e) No prime contractor under a lump-sum construction
23 contract shall have any major category of mechanical spe-
24 cialty work involved in the performance of such construction
25 contract as listed by the contracting executive agency in the

1 bidding or contract documents, performed by any person
2 other than the person named for the performance of such
3 work in accordance with subsection (b) or (c) of this
4 section, except in accordance with the provisions of subsec-
5 tion (f) or (g) of this section.

6 (f) If a contractor named by the prime contractor
7 under a lump-sum construction contract in accordance with
8 subsection (b) of this section shall fail or refused to perform
9 or complete the work to be performed by him in accordance
10 with the terms of his subbid or subcontract therefor, the
11 prime contractor may engage a substitute or different con-
12 tractor to perform such work: *Provided*, That he first
13 submits in writing to the contracting executive agency the
14 name of the substitute contractor.

15 (g) If, for any reason not specified in subsection (f),
16 a prime contractor under a lump-sum construction contract
17 prefers to have any major category of mechanical specialty
18 work on the project covered by such construction contract as
19 to which he has named a contractor under subsection (b)
20 hereof performed by a contractor other than the one named
21 in accordance with said subsection (b), the prime contractor
22 may engage such substitute contractor if (1) the prime con-
23 tractor submits to the contracting executive agency in writing
24 the name of the substitute contractor and such information as
25 the contracting executive agency may request as to any

1 change in cost to the prime contractor involved in the pro-
2 posed change in contractors; and (2) the use of such sub-
3 stitute contractor is ~~approved~~ *permitted* in writing by the
4 contracting executive agency.

5 (h) This Act shall not apply to the following construc-
6 tion contracts:

7 (1) Contracts to be performed outside the continental
8 limits of the United States, which limits shall be deemed to
9 include Alaska.

10 (2) Contracts in which the aggregate bid or proposal
11 accepted by the contracting executive agency does not
12 exceed \$100,000.

13 (3) Any contract with specific reference to which the
14 head of the contracting executive agency determines that the
15 procedure prescribed herein would result in undue delay and
16 that the public exigency will not admit of such delay.

17 SEC. 3. For the purposes of this Act--

18 (1) The term "executive agency" means any executive
19 department or independent establishment in the executive
20 branch of the Government, including any wholly owned
21 Government corporation.

22 (2) The term "construction contract" means any con-
23 tract entered into by any executive agency for the erection,
24 repair, moving, remodeling, modification, or alteration of any
25 building or structure upon real estate intended for shelter or

1 comfort, or for production, processing or travel, including
2 without being limited to, buildings, bridges, tunnels and high-
3 ways, but not including aqueducts, reservoirs, dams, irriga-
4 tion and regional water supply projects, flood control
5 projects, water power development projects, jetties and
6 breakwaters or the buildings or structures incident to or
7 included in the contract for such excluded projects.

8 (3) The term "mechanical specialty work" in connec-
9 tion with a construction contract means all plumbing, heat-
10 ing, piping, air conditioning, refrigerating, ventilating, and
11 electrical work, including but not being limited to the fur-
12 nishing and installation of sewer, drainage and water supply
13 piping and plumbing, heating, piping, air conditioning, re-
14 frigerating, ventilating and electrical materials, equipment
15 and fixtures.

16 (4) The term "prime contractor" means a person hav-
17 ing a direct contractual relationship with an executive
18 agency for the performance of a construction contract.

19 (5) The term "person" means an individual, corpora-
20 tion, partnership, association, or other organized group of
21 persons. All references to contractor or prime contractor
22 shall include individuals, corporations, partnerships, associa-
23 tions, or other organized groups of persons who are con-
24 tractors or prime contractors.

25 (6) The terms "lump-sum contract" and "lump-sum

1 construction contract" mean a construction contract, whether
2 awarded after bid or negotiated, under which the price is
3 fixed or to be fixed by any method other than the cost-plus-
4 a-fixed-fee method.

5 SEC. 4. (a) ~~This Act shall not~~ *Neither this Act nor*
6 *compliance with the provisions thereof shall* be construed to
7 create any privity of contract between the United States
8 Government, or any agency thereof, and any contractor,
9 contracting with the prime contractor under any construction
10 contract, ~~and shall not~~ *or* give any such contractor any cause
11 of action against the United States or any agency thereof
12 arising out of the failure of any person to comply with the
13 provisions of this Act.

14 ~~(b) Neither acceptance by an executive agency of a~~
15 ~~bid or statement of a prime contractor setting forth the name~~
16 ~~of a proposed contractor or awarding a contract to such~~
17 ~~prime contractor after such acceptance shall be construed to~~
18 ~~be approval or acceptance by the executive agency of the~~
19 ~~United States Government of any contractor named.~~

20 *(b) Acceptance by an executive agency of a bid or state-*
21 *ment of a prime contractor setting forth the name of a proposed*
22 *contractor, or awarding a contract to such prime contractor*
23 *after such acceptance, or permitting or denying the substitu-*
24 *tion of a contractor in accordance with the provisions of section*
25 *2 (g), shall not be construed to be approval or acceptance by*

1 *the executive agency of the United States Government of any*
2 *contractor named or substituted, or to relieve the prime con-*
3 *tractor of any responsibility for performance of the contract.*

4 (c) Nothing in this Act contained shall be construed
5 to prevent any executive agency from requiring, in its dis-
6 cretion, approval or acceptance by it of contractors engaged
7 or to be engaged by any prime contractor on a construction
8 contract or from making any other requirements it deems
9 advisable in its discretion with respect to contractors engaged
10 or to be engaged by prime contractors on any construction
11 contract or from requiring any information it deems advis-
12 able in its discretion as to the cost of performance of any
13 construction contract.

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